IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 12684 of 2004

with

SPECIAL CIVIL APPLICATION Nos. 12811 & 12812 of 2004

For Approval and Signature:

HONOURABLE MR.JUSTICE H.K.RATHOD

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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PRABHAT PURSHOTTAM TADVI & 2 - Petitioner(s)

Versus

DEPUTY EXECUTIVE ENGINEER - Respondent(s)

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Appearance :

MR NIKHIL D JOSHI for Petitioner(s) : 1 - 3.
MR MUKESH PATEL ld. AGP for Respondent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE H.K.RATHOD

Date : 16/01/2006

ORAL JUDGMENT

1. Learned Advocate, Mr.Nikhil D. Joshi, is appearing in this group of petitions on behalf of

petitioners. Learned AGP, Mr.Mukesh Patel, appearing on behalf of respondent in these three matters.

2. The petitioners workmen have challenged the award passed by Labour Court, Baroda in Reference No.789 of 1989, wherein, in all, 13 workmen were there. Learned Advocate, Mr.Joshi, appearing on behalf of petitioners submitted that out of 13 workmen, those who are concerned in Reference No.789 of 1989, 7 workmen have settled the matter with respondent – department and result thereto, they are reinstated in service. 2 workmen have died and now, 3 workmen remained, those who are not reinstated in service at par with other 7 employees. Therefore, this award is challenged by 3 workmen.

3. Labour Court, Baroda passed an award in Reference No.789 of 1989 dated 15th March,2004 rejecting reference of petitioners. The respondent – department has raised contention before Labour Court that irrigation department is not an 'industry' within meaning of Section 2(j) of I.D.Act,1947. That

contention was upheld by Labour Court relying upon judgment passed by Division Bench of this Court and come to conclusion that irrigation department of State of Gujarat is not an 'industry' and, therefore, without considering merits of matter, Labour Court, Baroda has rejected reference only on this ground.

4. Learned AGP, Mr.Mukesh Patel, appearing on behalf of respondent – department submitted that he wants to verify the decision of Full Bench in respect to fact that whether irrigation department is held to be 'industry' or not, and is there any different kind of activities is necessary or not. Therefore, he wants some time. He also submitted that whether State of Gujarat has challenged this decision of Full Bench in higher forum or not. Even that fact has been required to be inquired by him. Therefore also, he wants some time.

5. I have considered the submissions made by both learned Advocates. Learned Advocate, Mr.Joshi, has relied upon decision of Full Bench of this Court in

case of Gujarat Forest Producers, Gatherers and Forest Workers Union Vs. State of Gujarat, reported in 2004 (2) GLH 302. He relied upon the observations made by Full bench in Para.28.6, which is quoted as under :

> “We therefore answer the part of question No.1 relating to the irrigation department, of the questions referred in Special Civil Application No.4715 of 2003 and 4435 of 2001, by holding that the activity of irrigation and canal works undertaken by the Narmada Water Resources and Water Supply Department is an "industry". As regards the questions No.2 and 6 referred in the said matter, we hold that the decision of the Division Bench in P.W.D. Employees Union v. State of Gujarat reported in 28(2) GLR 1070, which is confirmed by the Supreme court by a three judge bench judgment in the decision in State of Gujarat v. P.W.D. Employees Union, reported in (2002) 10 SCC 147, holding that the irrigation department of the P.W.D. is an "industry" under Section 2(j) of the Industrial Disputes Act, 1947, lays down the correct law and the decision in S.C.Thakor v. State of Gujarat reported in (2000) 1 GLH 482 and State of Gujarat v. D.B.Thakor, reported in (2003) 2 GLH 420, to the extent they hold to the

contrary, do not lay down correct law and are, therefore, overruled. In view of the above discussion, the decision of the learned Single Judge in State of Gujarat v. Maniben, reported in (2003)2 GLH 368 has correctly followed the decision of the Division Bench of this Court in P.W.D. Employees Union v. State of Gujarat, reported in 28(2) GLR 1070 and the decision of the Supreme Court in Des Raj (supra), reported in AIR 1988 SC 1182, for holding in paragraph 44 of the judgement that the Irrigation Department of the State is an "industry". The question No.4 is answered accordingly. The question No.2 "Whether the Forest Department of the State of Gujarat is an "industry" as referred in Special Civil Application No.8259 of 1996 and 2566 of 1997, is already answered hereinabove. The question No.5 therefore stands answered accordingly."

6. Learned AGP, Mr.Mukesh Patel, has also read this Para.28.6 and now, submitted and admitted that whether irrigation department is an 'industry' or not, has already decided by Full Bench of this Court and, therefore, Labour Court should have to accept the said decision and to decide the matters on

merits.

7. In view of these facts, as per Full Bench's decision of this Court, irrigation department is held to be an 'industry' under Section 2(j) of the I.D.Act,1947. Therefore, award passed by Labour Court, Baroda dated 15th March,2004 in Reference No.789 of 1989 is hereby quashed. Labour Court, Baroda is directed to follow the decision of Full Bench of this Court reported in 2004 (2) GLH 302 and now, it is not necessary to be examined by Labour Court whether irrigation department is an 'industry' or not, as it is already decided by Full Bench of this Court. Therefore, it is directed to Labour Court, Baroda to decide matters on merits after giving reasonable opportunity to both the parties within a period of six months from the date of receiving the writ of this order. Rule is made absolute with no order as to costs.

(H.K.RAHOD,J.)

(vipul)